

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AFSHIN BAHRAMPOUR,
Petitioner,

v.

SHERIFF JOSEPH LOMBARDO, et al.,
Respondents.

Case No. 2:20-cv-00857-RFB-EJY

ORDER

This is a closed habeas corpus action under 28 U.S.C. § 2241. The court directed petitioner, Afshin Bahrapour, to show cause why the court should not dismiss this action because it needed to abstain from interfering with ongoing state-court criminal proceedings under Younger v. Harris, 401 U.S. 37 (1971). ECF No. 3. The court also dismissed ground 9 through 12 because they were plainly without merit. Bahrapour filed a response to the order to show cause and a motion for reconsideration. ECF No. 5, 6.¹ Bahrapour did not persuade the court. The court dismissed the action and entered judgment. ECF No. 7, 8.

Two days after the court entered judgment, Bahrapour filed another response to the order to show cause. ECF No. 9. The court does not know if this second response and the order dismissing the action crossed in the mail, or if the second response is a response to the dismissal of the action.

¹ The response and the motion are the same document but docketed individually.

1 Bahrapour's initial response was flawed. Bahrapour focused entirely on the court's
 2 dismissal of grounds 9 through 12 as fantastic and frivolous. He did not address the court's concern
 3 that it needs to abstain from interfering in ongoing criminal proceedings in the state courts. See
 4 ECF No. 7 at 2. The Court dismissed the action for that reason. Id.

5 Bahrapour's second response does address Younger. The court will construe it as a motion
 6 for reconsideration of the dismissal of this action.

7 Bahrapour presents five reasons why the court should consider this case, which the Court
 8 quotes with minor corrections:

9 1. The plaintiff is innocent until and unless found guilty and has a right to a
 10 reasonable bail. Punishment should not both precede the conviction and follow the
 conviction.

11 2. Nevada Revised Statute defining acts of terrorism or attempted acts of
 12 terrorism is void-for-vagueness and fails to give fair notice or encourages arbitrary
 enforcement of the law.

13 3. Presently plaintiff's bail is set at \$1,000,000.00 (one million dollars) because
 14 Nevada's terrorism statute (that is void for vagueness) is a class A felony. It's illegal
 to set bail on void criminal laws.

15 4. Setting such a high bail because of a void statute irreparably harms the
 16 plaintiff because he cannot exercise his right to bail and be free pending his trial and
 subsequent acquittal or conviction.

17 5. Setting bail to hold someone over for trial on an obviously vague and void
 18 statute is irreparable harm because it is the most serious felony charge the plaintiff
 19 faces and were it not for this charge the other charges would have been resolved by
 now through plea negotiations because plaintiff has been in custody over 42 months
 on this case.

20 ECF No. 9 at 3-4.

21 Bahrapour appears to try to excuse the application of Younger by arguing that his bail is
 22 too high. Younger abstention is not appropriate for a claim that a person is subject to excessive
 23 bail for two reasons. Arevalo v. Hennessy, 882 F.3d 763 (9th Cir. 2018). First, litigation over bail
 24 is distinct from the criminal prosecution and thus would not interfere with that prosecution. Id. at
 25 766. Second, excessive bail itself is a constitutional deprivation that causes irreparable harm, and
 26 irreparable harm is an exception to Younger abstention. Id. at 766-67.

27 However, Bahrapour does not allege some constitutional error in the process of setting
 28 bail, nor does he allege that the bail, by itself, is excessive. Instead, he argues that Nev. Rev. Stat.

1 § 202.4415, defining acts of terrorism, is unconstitutionally vague. In turn, he could not be
2 prosecuted under Nev. Rev. Stat. § 202.445, which prohibits acts of terrorism or attempted acts of
3 terrorism. Then, with those statutes out of the way, he argues that his bail is excessive for the
4 remaining charges.

5 Bahrapour does not persuade the Court that Younger abstention is inappropriate. To reach
6 his excessive-bail claim, the Court first must determine that § 202.4415 is unconstitutionally vague
7 and that § 202.445 is inoperative. The prosecution has charged Bahrapour with violating
8 § 202.445. A determination that § 202.4415 is unconstitutionally vague thus would interfere with
9 the ongoing criminal proceedings in state court. Consequently, the Court will not depart from its
10 earlier determination that it should abstain from interfering with ongoing state-court criminal
11 proceedings.

12 Reasonable jurists would not find this determination to be debatable or wrong, and the Court
13 will not issue a certificate of appealability.

14 IT THEREFORE IS ORDERED that petitioner's response (ECF No. 9), which the court
15 construes as a motion for reconsideration, is **DENIED**.

16 IT FURTHER IS ORDERED that a certificate of appealability will not issue.

17 DATED: January 20, 2021.

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20 RICHARD F. BOULWARE, II
21 United States District Judge
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